

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04M-7001-01-DJW

ERIC CAMBRON,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04M-7002-01-DJW

CHRISTOPHER TIJERINA,

Defendant.

ORDER

A joint bench trial was held on December 8, 2004 with respect to the two cases set forth above. During the course of this trial, the government introduced four documents – two stipulations of fact and a statement from each Defendant made at the time of their arrest. The statements were admitted only against each Defendant and not to be used against the other Defendant. At the close of evidence, both Defendants moved for an acquittal on the basis that on insufficient evidence. The Court requested counsel to submit written briefs on the Motion. Counsel has since submitted the requested briefs and the Court is now ready to rule. For the reasons set forth below, Defendants’ oral Motions for Acquittal are both granted.

Discussion

A. Theft

Defendant Tijerina and Defendant Cambron are each charged with one count of theft pursuant to 18 U.S.C. §661, which provides in relevant part that “[w]hoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows”

Consistent with the statute, the charging information reads, for both Defendants, as follows: “On divers [sic] occasions between or about May 31, 2003, and August 8, 2003, at Fort Leavenworth Kansas, within the territorial jurisdiction of the United States and the District of Kansas, Defendant [] did take and carry away , with intent to steal or purloin, personal property of another”

Thus, the applicable statute requires, and the information in both cases allege, that the thefts at issue occurred within the “special maritime or territorial jurisdiction of the United States”; in other words, that the thefts occurred on Fort Leavenworth property. Defendants move for acquittal on grounds that the United States failed to establish at trial that the thefts occurred on Fort Leavenworth property.

There is nothing in Defendant Tijerina’s or Defendant Cambron’s factual stipulations that refer either to the District of Kansas or to Fort Leavenworth. Moreover, there is nothing in Tijerina’s or Cambron’s statements that establish the thefts occurred on the grounds of Fort Leavenworth. Although there are general references to a “fort,” to “infantry barracks,” “military police” and to various street names and businesses, none of the entities referenced in the statements are identified, with competent evidence, as locations within the boundaries of Fort Leavenworth, Kansas.

In its responsive briefing, the government argues Defendants orally waived jurisdiction immediately prior to trial. The Court is not persuaded by the government's argument. Defendants consented to the undersigned magistrate judge presiding over their case, as opposed to an Article III district court judge. Such a consent does not relieve the government of its burden to prove an essential element of the crime alleged.

Based on the government's failure to establish that the alleged crime occurred "within the special maritime and territorial jurisdiction of the United States" – an essential element of the offense charged pursuant to 18 U.S.C. §661 – Defendants's Motions for Acquittal on these charges will be granted.

B. Possession

Although Defendant Cambron is also charged with possession of marijuana pursuant to 21 U.S.C. § 844, there was no evidence presented during the trial to establish that such possession occurred within the boundaries of Fort Leavenworth, or even within the boundaries of Kansas. The entirety of the evidence against Defendant Cambron is:

1. From Defendant Cambron's stipulation of fact: "During the search of the vehicle some amount of residual marijuana was found in the center console and the floorboard of the vehicle."
2. From Defendant Cambron's statement:

Q: Who's marijuana was it in the vehicle?
A: Mine and Chris's
Q: Why was it in the vehicle
A: It's been in there for a while.
Q: Did you buy the marijuana in a ziplock superman bag?
A: No.

There is nothing to establish where the car was when it contained the marijuana or when it was searched. With no evidence that the marijuana was possessed in the Court's jurisdiction or venue, the Court will grant Defendant Cambron's Motion for Acquittal with respect to the possession charge.

Because the government failed to present sufficient evidence to meet its burden of proving all elements of the crimes, both Defendants' oral Motions to Acquit are granted.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this _____ day of February, 2005.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties